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EXAMINER	
MADSEN, ROBERT A	

ART UNIT	PAPER NUMBER
1761	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/781,581	Applicant(s) REBHORN ET AL.
	Examiner Robert Madsen	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 July 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29,31-33 and 39-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29,31-33 and 39-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. The Amendment filed July 15, 2003 has been entered. Claims 1-29,31-33,39-43 remain pending in the application.

2. The rejection of claims 20 and 22 made under 35 U.S.C. 102(b) as being anticipated by Silver is withdrawn in light of applicant's arguments.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 20 and 39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Regarding claims 20 and 39, the limitation of the base of the compartment having " a non-circle perimeter" is not supported by the disclosure. First ,a base defining "a non-circular perimeter" includes perimeters other than circular perimeters that are not supported by the specification (i.e. triangular, rectangular, octagonal, etc) Second, the specification suggests that the bottom is a circular parameter since it is the base of a side wall that" is preferably cylindrical in shape" (Page 12, line 30) and "the side wall 62 is preferably circular in transverse cross section" (page 13, lines 1-2). Third, even with a recess 74, the specification states "a recess 74 is formed at a lower portion of the

side wall 62" (Page 13, lines 3-4) and does not explicitly disclose that the recess is formed in the bottom. This is further supported by the fact that the walls and bottom may be formed separately (Page 14, lines 3-10), and a recess formed in the wall would not impact the bottom. Additionally, using Figures 3A and 3B for guidance, it is noted that the portion of the drawings representing the bottom 60 do not suggest a non-circular perimeter. Figure 3A does not indicate any disruption in the line 60. Figure 3B shows a circular perimeter and where the portion 74 occurs, there is a solid line, presumably bottom 60 since it surrounds the internal region of the second compartment (item 66). Figure 4 also does not provide sufficient support of a non-circular perimeter, given it is only a cross-sectional view.

6. Examiner suggests "a recess formed at a lower portion of the side wall" instead of "a base defining a non-circular perimeter" since this limitation is supported by both the figures and the specification.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1,4-7,11,20, 22-24, 39-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop (US 3069043).

9. See the reasons of record stated in Paper No. 13. Furthermore, with respect to amended claims 20 and 22, a fluid passage way is defined by the first compartment side wall and exterior surface of the second compartment side wall since liquid fluid

must pass between these two side walls to go from the internal storage region (i.e. located between the bottom of container 5 and the bottom of container 4) to the pour opening of item 24(See Figure 4). Additionally, with respect to claim 24, the lip (item 30) does abut the rim (item 10) and item 20 in Figure 4 is located over the lip and an item 24 (i.e. a hole). Item 20 is defined as a cover or *closure*, which can "close or make secure against access, leakage or passage".

10. Claims 1-7, 11,15-20,22-23,39-41, 43 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gerhart et al. (US 6528105 B1).

11. Regarding claims 1-7, 15-19, 22-23,40-41, 43 See Abstract, Figures 1-6, Column 3, 25-67.

12. Regarding claim 11, the pour opening (item 230)has a greater radial width than the uppermost portion of the lip (item 225). See Figure 2.

13. Regarding claims 20 and 39, see column 4, lines 55-60.

14. Claims 25,28,29, 31,33 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gerhart et al. (US 6528105 B1). See Abstract, Figures 1-6, Column 3, 25-67.

Claim Rejections - 35 USC § 103

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop (US 3069043) as applied to claims 1,4-7,11,20, 22-24, 39-43 above, further in view of Siegel et al. (US 5209909).

17. Bishop teaches welding (Column 1, lines 65-69), but is silent in teaching ultrasonic welding Siegel also teach a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and affixing the lip of the second compartment to the rim of first by adhesive, and further teach ultrasonic welding the two compartments together(Column 4, line 65 to Column 5,line 6, Figures 5-7). Therefore it would have been obvious to modify Bishop and use ultrasonic welding to affix the lip to the rim since one would have been substituting one conventional type of welding for another for the same purpose. to weld together a two-compartment container having a first outer compartment, second inner compartment, the compartments nested together, a hole formed in the lip of the second compartment, and the lip of the second compartment welded to the rim of first compartment.

18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1)as applied to claims 1-7, 11, 15-20,22-23,39-41, 43 , further in view of Ness (US 5753289)

19. Gerhart et al. teach a bottom diameter of 2.5 inches (Column 4, lines 25-30) and that the intended use is for consuming while engaged in other activities such as driving (Column 1, lines 13-20). Gerhart et al. are silent in teaching about 2.2 inches (i.e. 2.2 +/- 0.2 inches as defined by applicant).

20. Ness who also teaches milk/cereal containers for use while driving, teaches the containers should be sized to fit in a cup holder in a car . Ness also teaches the size of such a container depends on the age of the intended user , suggest the particular volume of milk and cereal for an adult versus a child, and even suggests an outer diameter for adults of approximately 3 inches (Column 6, lines 22-53). Therefore, to select any particular diameter for the bottom of the first compartment would have been an obvious result effective variable of (1) age of the intended user (2) the intended volume of milk/cereal (3) intended use of the container (i.e. in a car it must fit into a conventional cup holder) since Ness teaches a similar container and suggests various sizes for various intended uses/users.

21. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1) as applied to claims 1-7, 11, 15-20,22-23,39-41, 43 , further in view of Dickerson (5706980).

22. Regarding claim 9, Gerhart et al. do teach the lip provides the vents (item 230) for liquid flow and that the lip interlocks with the rim (item 105). However, Gerhart et al. are silent in teaching a minimum radial width of the lip is 0.125 inch. Dickerson, who also teaches a milk/cereal container with milk in the first compartment, teaches a liquid channel is sized to assist in providing control of the appropriate ratio of liquid to dry product to be consumed (Column 4, line 65-Column 5, line 10). Therefore, to select any particular radius for the pour opening would have been an obvious result effective

variable of the desired liquid to dry product ratio during consumption as well has the particular width of the rim so that the lip can still interlock with the rim.

23. Regarding claim 10, Gerhart et al. teach an elongated pour opening (i.e. stretched along the lip) with a major diameter that follows the circumference of the lip, but are silent in teaching a major diameter of 0.25 inch. However, Dickerson, who also teaches a milk/cereal container with milk in the first compartment, teaches a liquid channel is sized to assist in providing control of the appropriate ratio of liquid to dry product to be consumed (Column 4, line 65-Column 5, line 10). Therefore, to select any particular diameter would have been an obvious result effective variable of the desired liquid to dry product ratio during consumption.

24. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1) as applied to claims 1-7, 11, 15-20,22-23,39-41, 43 , further in view of above, further in view of Siegel et al. (US 5209909).

25. Gerhart et al. teaches a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and lip interlocked on, or affixed to, the rim, and a seal is applied to ensure sanitary conditions during shipping(Abstract, Column 4, lines 21-24). Siegel also teach a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and affixing the lip of the second compartment by frictional engagement, but further teach ultrasonic welding as other suitable "affixing" means(Column 4, line 65 to Column 5,line 6, Figures 5-7). Therefore it would have been obvious to modify

Gerhart and use ultrasonic welding to affix the lip to the rim since ultrasonic welding would further enhance the sanitary conditions (as compared to interlocking) and one would have been substituting one conventional means for affixing a lip to rim for another for the same purpose: to seal a two compartment container having a first outer compartment, second inner compartment, the compartments nested together, a hole formed in the lip of the second compartment, and the lip of the second compartment affixed to the rim of first compartment.

26. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1) in view of Siegel et al. (US 5209909).

27. Regarding claim 24, claim 24 differs from claim 1 in the recitation of the lip is permanently affixed to the rim and the lip is parallel to the bottom. Gerhart et al. teach all the features of claim 1 (as discussed above) and the lip parallel to the bottom (Abstract, Figures 1-6, Column 3, 25-67). Gerhart et al. also teach the lip abuts the rim when it is interlocked on, or affixed to, the rim, and a seal is applied to ensure sanitary conditions during shipping(Abstract, Column 4, lines 21-24). However, Gerhart et al. are silent in teaching the lip is permanently affixed to the rim. Siegel also teach a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and affixing the lip of the second compartment by frictional engagement, adhesive, and further teach permanent means for affixing, such as ultrasonic welding (Column 4, line 65 to Column 5,line 6, Figures 5-7). Therefore it would have been obvious to modify Gerhart and use a permanent means to affix the lip

to the rim since a permanent seal would further enhance the sanitary conditions (as compared to interlocking) and it was known to use a permanent sealing means between two compartments. One would have been substituting one conventional means for affixing a lip to rim for another for the same purpose: to seal a two compartment container having a first outer compartment, second inner compartment, the compartments nested together, a hole formed in the lip of the second compartment, and the lip of the second compartment affixed to the rim of first compartment.

28. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1) applied to claims 25,28,29, 31,33 above, further in view of Newarski (US 5496575).

29. Gerhart et al. teach assembling a container with filled compartments, filling the first compartment and covering both compartments to assure sanitary conditions during shipping (Column 4, lines 21-24). Gerhart et al. are silent in teaching the step of placing the second compartment into the first compartment after sanitizing the first compartment, and a sanitizing the exterior of the second compartment.

30. However, these sanitizing steps are well known steps in pre-packaging cereal and milk together in separate compartments. Newarski, for example, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50). Therefore, it would have been obvious to include the steps of sanitizing the first compartment and sanitizing the

second compartment prior to placing it into the first filled compartment since Gerhart et al. wanted to maintain sanitary conditions of the milk/cereal container during shipping, and it is notoriously well known that sanitary milk packages (i.e. aseptic milk packages) require sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Gerhart et al. that would be the interior of the first compartment and the exterior of the second compartment.

31. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1) applied to claims 25,28,29, 31,33 above, further in view of Newarski (US 5496575) and Siegel et al. (US 5209909).

32. Gerhart et al. teach assembling a container with filled compartments, filling the first compartment and covering both compartments to assure sanitary conditions during shipping (Column 4, lines 21-24). Gerhart et al. are silent in teaching the steps of sanitizing both compartments, sealing the pour opening before placing the second compartment into the first, and filling the second after it is placed in the first compartment.

33. With respect to sanitizing both compartments, Newarski teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50). Therefore, it would have been obvious to include the steps of sanitizing the compartments since Gerhart et al. wanted to maintain sanitary conditions of the milk/cereal container during shipping, and it is

notoriously well known that sanitary milk packages (i.e. aseptic milk packages) require sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Gerhart et al. that would be both compartments.

34. With respect to filling the second compartment while in the first compartment and sealing the pour opening prior to inserting the second compartment into the first compartment, Siegel et al who also teach a container similar to Gerhart et al. wherein both compartments may be sealed with the same cover, but are relied as evidence of the conventionality of alternatively sealing the pour opening of the second compartment in order to maintain a hermetic seal around a more environmentally sensitive first product in the first compartment (Column 5, lines 34-68). Therefore, it would have been obvious to further seal the pour opening before inserting the second compartment into the first since it was well known that this will preserve a more sensitive first product, when filling the second, and Gerhart et al. wanted to maintain sanitary conditions. One would have been substituting one assembly step for another for the same purpose: filling a two-compartment container wherein a first component in the outer first compartment is more environmentally sensitive than the second.

35. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerhart et al. (US 6528105 B1) applied to claims 25,28,29, 31,33 above, further in view of Siegel et al. (US 5209909).

36. Gerhart et al. teaches a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and lip interlocked

on, or affixed to, the rim, and a seal is applied to ensure sanitary conditions during shipping(Abstract, Column 4, lines 21-24). Siegel also teach a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and affixing the lip of the second compartment by frictional engagement, adhesives, and further teach ultrasonic welding as other suitable "affixing" means(Column 4, line 65 to Column 5,line 6, Figures 5-7). Therefore it would have been obvious to modify Gerhart and use ultrasonic welding to affix the lip to the rim since ultrasonic welding would further enhance the sanitary conditions (as compared to interlocking) and one would have been substituting one conventional means for affixing a lip to rim for another for the same purpose: to seal a two compartment container having a first outer compartment, second inner compartment, the compartments nested together, a hole formed in the lip of the second compartment, and the lip of the second compartment affixed to the rim of first compartment.

37. Claims 1-7,9,10,12-19,22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Dickerson (5706980) in view of Siegel et al. (US 5209909) and Gerhart et al. (US 6528105 B1).

38. Regarding claims 1-7,12-19,22-24, Dickerson teaches: a first outer milk-containing compartment (item 20 of the Figures) , as recited in claims 2,3, 18, and 19,which may be completely sealed as recited in claim 6 when not used and completely sealed except for the pour opening 22 during use(Column 5, line 34- Column 6, line 15), may be made of flexible material to control flow as recited in claim 13 (Column 10, lines

34-40), and has a rim (item 37 of the Figures)and a bottom; a second inner cereal-containing compartment (item 22), as recited in claims 2, 3,15-17, with a lip (item 32) that is affixed to the rim (item 35), as recited in claim 5 and 24 via a seal surface(item 29) and a cover (item 24) that is sealed to the lip that encompasses the opening, as recited in claim 23 (Figure 3, Column 5, line 63 to Column 6, lines 13, Column 8, lines 55-67);a lip, in some embodiments, is substantially parallel to the lower plane defined by the bottom since Dickerson teaches the entire first compartment may be cylindrical when the first compartment is insulated, instead of just the liquid containing portion as shown in Figure 3 (Column 5, lines 34-45, Column 8, lines 55-59) as recited in claims 7 and 24; a pour hole, as recited in claim 15, formed through the lip, which is formed a recess in the second compartment as recited in claim 14 (See Figure 6A);a spout formed in the first compartment as recited in claim 12(See Figure 6B around items 28 and 32), a cover secured to the lip (item 24 in Figure 5);and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening as recited in claims 1,15, 22 , and 24(Figures, Column 3, lines 10-60). Dickerson teaches the cover (i.e. item 24) includes a cover piece 25 seals the comestible opening (Column 9, lines 25-67).

39. However, Dickerson is silent in teaching the cover and cover piece also seal the pour opening as recited in claims 1,15, 22,and 24, the rim and lip *extend radially outwardly* as recited in claims 1,15, and although Dickerson teaches the lip is affixed to the rim (via item 35) is silent in teaching the lip *rests* on the rim as recited in claim 4, or is *permanently* affixed to the rim, as recited in claim 24.

40. Siegel also teaches two compartments that are nested and attached by affixing the lip to the rim: a first outer compartment (i.e. item 60 of Figures 5-7) is completely sealed (See Figure 6, Column 5, lines 49-62) and has a rim that extends radially, as recited in claims 1 and 15; a second inner compartment has a lip that extends radially (See Figure 7) and rests on *and* is sealed to the rim (item 70) as recited in claims 4 and 24(Column 4, line 59 to Column 5, line 6). Additionally like Dickerson, Siegel teaches a pour opening formed through the lip (items 82/84), which is formed by a recess in the second compartment , a cover secured to the lip (item 102) that encompasses the pour opening as recited in claims 1,15,22, and 24, and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening (figures 5-7, Column 4, lines 50-64, Column 2, 33-68).

41. Gerhart et al. who teach a milk/cereal container are relied on as further evidence of the conventionality of cover sealing the lid and seal pour opening as recited in claims 1 and 15 to ensure sanitary conditions for shipping, and a lip that rests on the rim, as recited in claim 4 (Column 4, lines 18-23, Column 3, 25-67).

42. Therefore, it would have been obvious to modify Dickerson and extend the lip and rim radially such that the lip rests on and is affixed to the rim as recited in claims 1,4,15, 22 and, 24, since one would have been substituting on means of affixing the lip of an second compartment to the rim of a first compartment for another for the same purpose: providing a sealed nesting arrangement of the second compartment within the first compartment that allows for dispensing of the contents of the first compartment. It also would been obvious to modify the cover the Dickerson to seal both the second

compartment and pour opening, as recited in claims 1, 15, 22,24, since it was known means for a second compartment within a first compartment and Gerhart et al. teach providing such a cover ensures a sanitary seal for shipping a milk/cereal container.

43. Regarding claim 9, Dickerson teaches a pour hole is formed with the lip and that the hole must be sized to provide control over the milk flow (Column 4, line 65-Column 5, line 10), but Dickerson is silent in teaching any particular radius width for the annular lip. Siegel, however, teaches when lip extends radially the lip contains the pour hole, and the lip is affixed to the rim by adhesive or welding means(Column 4, line 64-Column 5, lines 15, Column 2, lines 34-68). Therefore, to select any particular width of the lip would depend on (1) the desired pour hole size/control over the milk flow and (2) the width required to sufficiently seal the lip to the rim by adhesive or welding since Dickerson teaches the pour hole must be sized to control milk flow and Siegel teaches the lip that extends radially the lip contains the pour hole, and the lip is affixed to the rim by adhesive or welding means.

44. Regarding claim 10, although Dickerson is silent in teaching any particular radius size for the pour opening, Dickerson does teaches the liquid channel is sized to assist in providing control of the appropriate ratio of liquid to dry product to be consumed (Column 4, line 65-Column 5, line 10). Therefore, to select any particular radius for the pour opening would have been an obvious result effective variable of the desired liquid to dry product ratio during consumption.

45. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) in view of Siegel et al. (US 5209909) and Gerhart et al. (US 6528105 B1), as applied to claims 1-7,9,10,12-19,22-24 above, further in view of Ness (US 5753289)

46. Regarding claim 8, although Dickerson teaches the container is meant to be hand-held, Dickerson is silent in teaching the diameter of the first compartments, (Column 4, lines 51-64).

47. Gerhart et al. teach a bottom diameter of 2.5 inches (Column 4, lines 25-30) and that the intended use is for consuming while engaged in other activities such as driving (Column 1, lines 13-20).

48. Ness, who also teaches a hand held two-compartment container, for dispensing milk and cereal (Abstract and Figures). Ness teaches the size of such a container depends on the age of the intended user , suggest the particular volume of milk and cereal for an adult versus a child, and even suggests an outer diameter (i.e. the equivalent to Dickerson's first compartment diameter) for adults of approximately 3 inches. Ness further teaches such containers preferably fit into a cup holder in a car (Column 6, lines 22-53). Therefore, to select any particular diameter for the bottom of the first compartment would have been an obvious result effective variable of (1) age of the intended user (2) the intended volume of milk/cereal (3) intended use of the container (i.e. in a car) since Ness teaches a hand held two compartment container, for dispensing milk and cereal should be sized approximately 3 inches in diameter for adults, smaller for children, should be sized to hold a particular volume of milk and cereal (larger for adults, smaller for children), and sized to fit into a car cup holder.

49. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980)) in view of Siegel et al. (US 5209909) and Gerhart et al. (US 6528105 B1), as applied to claim 1-7,9,10,12-19,22-24 above, further in view of Ours et al. (US 6264068 B1).

50. Dickerson is silent in teaching a radial extension on the lip at the pour opening. Ours et al. , like Dickerson, also teaches a handheld solid/liquid container that dispenses the liquid contained in a lower compartment (Dickerson's first compartment) along with the solid contained in an upper compartment(Dickerson's second compartment) . Ours et al. are relied on as further evidence of providing a radial lip extension from the solid compartment (i.e. the compartment situated above item 60 of Figures 6A and 6B) in order to reduce spilling of the liquid and promote pouring of the solid material(Abstract, Column 2, lines 48-63). Therefore, it would have been obvious to modify the lip of Dickerson and provide a radial extension since this would facilitate pouring of the cereal and reduce spilling of the milk. One would have been substituting one conventional lip design for another for the same type of dispensing container.

51. Claims 25,28- 33 are rejected 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) in view of Gerhart et al. (US 6528105 B1) and Siegel et al. (US 5209909).

52. Regarding claims 25,28-31, Dickerson teaches a method of providing a fist outer compartment with a rim, a second inner compartment with a lip, dispensing milk into the first and cereal into the second, as recited in claims 28-31, placing the second

compartment into the first such a fluid passageway is established between the two compartments, and resting the lip *above* the rim when they are affixed to one another, as recited in claim 25, but is silent in teaching the lip rests *on top of* the rim and the two (Column 10, lines 3-15, Figures 2 and 3 in light of the Abstract).

53. Gerhart et al. who teach a milk/cereal container are relied on as evidence of the conventionality of the lip of the second/cereal compartment resting and affixed on the rim of the first/milk compartment (Column 3, 25-67).

54. Siegel is relied on as further evidence of the conventionality of providing a first outer and second inner compartment, dispensing a different product into each compartment, placing the second compartment into the first compartment yet maintaining a fluid passageway between the two compartments, and resting the lip of the second compartment above the rim of the first compartment. Siegel teaches the lip rests on top of the rim as method of affixing the rim to the lip. Siegel does so by extending the rim radially and extending the lip radially(See Figures 5-77,Column 4, line 59 to Column 5, line 6).

55. Therefore, it would have been obvious to modify Dickerson and extend the lip and rim radially such that the lip rests on top of the rim since one would have been substituting one method of affixing the lip of an second compartment to the rim of a first compartment for another for the same purpose: providing a sealed nesting arrangement of the second compartment within the first compartment that allows for dispensing of the contents of the first compartment.

56. Regarding claim 32, as discussed above in the rejection of claims 25,28-31, Dickerson teaches sealing the lip to the rim to secure the compartments(Column 3, lines 45-60), but is silent in teaching ultrasonic welding. However, Siegel et al. are relied on as evidence of using ultrasonic welding as a suitable means to seal the rim to the lip (column 4, line 64 to Column 5, line 6). Therefore, it would have been obvious to modify the method of Dickerson and include sonic welding since one would have been substituting one method of sealing for another for the same purpose: sealing an inner compartment within an outer compartment such that the products stored within each are stored separately, but may be dispensed simultaneously.

57. Regarding claim 33, Dickerson teaches providing a cover and sealing the cover to the lip, and the cover allows dispensing of the milk and cereal (Column 10, lines 11-15, Column 9, lines 1-25).

58. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) in view of Gerhart et al. (US 6528105 B1) and Siegel et al. (US 5209909)as applied to claims 25,28-33 above, further in view of Newarski (US 5496575).

59. As discussed above in the rejection of claim 25, Dickerson teach the recited filling, sealing and assembly steps. Dickerson also teaches covering the second compartment and placing the second compartment into the first (Column 10 lines 3-15). Dickerson further teaches the second compartment may be lidded prior to assembly when both compartments are in a pre-packaged form for consumers (Column 7, lines

17-40). Dickerson is silent in teaching any sanitizing steps wherein after the second compartment is covered the outside of the compartment is sanitized, the first compartment is sanitized before it's filled with product so that when the covered second compartment is placed into a sanitized first compartment.

60. However, these sanitizing steps are well known steps in pre-packaging cereal and milk together in separate compartments. Newarski, for example, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50). Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Dickerson that would be the interior of the first compartment and the exterior of the second compartment.

61. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980)in view of Gerhart et al. (US 6528105 B1) and Siegel et al. (US 5209909)as applied to claims 25,28-33 above, further in view of Newarski (US 5496575).

62. As discussed above in the rejection of claim 25, Dickerson teaches the recited filling, sealing and assembling steps. Dickerson also teaches covering the second

compartment and placing the second compartment into the first (Column 10 lines 3-15). Dickerson further teaches the second compartment may be lidded prior to assembly when both compartments are in a pre-packaged form for consumers (Column 7, lines 17-40). Dickerson is silent in teaching any sanitizing steps wherein after both compartments are both sanitized, the first compartment filled, the pour opening is sealed before the second compartment is placed into the first compartment, and the second compartment is filled after it has been placed into the first compartment.

63. Newarski, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50).

64. Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Dickerson that would be the interior of the first compartment and the exterior of the second compartment.

65. With respect to sealing the pour opening before filling the second compartment, Siegel et al who also teach a container similar to Dickerson wherein both compartments may be sealed with the same cover, but are relied as evidence of the conventionality of alternatively sealing the pour opening of the second compartment in order to maintain a hermetic seal around a more environmentally sensitive first product

in the first compartment (Column 5, lines 34-68). Therefore, it would have been obvious to further seal the pour opening before inserting the second compartment into the first since it was well known that this will preserve the a more sensitive first product, when filling the second. One would have been substituting one assembly step for another for the same purpose: filling a two-compartment container wherein a first component in the outer first compartment is more environmentally sensitive than the second.

Response to Arguments

66. Applicant argues that Bishop (US 3069043) does not teach a cover that *seals* a hole located on a flange of a second inner compartment because Bishop does not teach a cover that can "close or make secure against access, leakage or passage" with respect to the second inner compartment. As cited by the examiner in Paper No. 13, applicant's attention was directed to Column 1, lines 34-72 in light of the embodiment discussed in Column 2, lines 28-35 and Figure 4. Specifically, in Column 2, lines 28-35 and Figure 4, Bishop teaches the inner container (item 5) has a flange 30 (or lip) that is seated on the outer container (item 4) flange 10 (i.e. rim). Figure 4 shows an item 20, which Bishop defines as a cover or *closure*, located over item 30, a lip, which comprises an item 24, which Bishop defines as a hole. Cover or closure 20 is clearly located over the hole 24 in Figure 4, and being a *closure,* item 20 serves to "close or make secure against access, leakage or passage".

67. Applicant also argues that Gerhart does not teach the recited lip. The previous office action cited Column 3, lines 25-67, as evidence of the recited lip. Gerhart refers to

a lip sidewall 220 and attaching lip 215. Thus, it is maintained that Gerhart teaches a lip *comprising* the 220/215 structure, as well as eating portion 225.

68. Applicant argues that the specification and drawings provide support for the limitation " a base defining a non-circular perimeter". However, as noted above in the rejection made under 35 USC 112, first paragraph, the disclosure does not have support for perimeters such as octagonal, which are included in the "non-circular" limitation, and the drawings do not suggest a base of any other form than circular. Applicant has support for "a recess formed at a lower portion of the side wall" in both the drawings and the specification.

Conclusion

69. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

70. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

71. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

72. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761

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